

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.25551 of 2006

DATED: 01.11.2007

Between:

Kadavath Bheem Bai

....Petitioner

AND

1. The Joint Collector, Ranga Reddy District, Hyderabad and others

....Respondents

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WRIT PETITION No.25551 of 2006

ORDER:

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Heard Sri A. Sai Chakravarthi, the learned counsel representing the writ petitioner, the learned Assistant Government Pleader for Civil Supplies and Sri S. Satyam Reddy, the learned Counsel representing respondents 4 and 5.

2. This writ petition is filed for a Writ of Mandamus declaring the action of the second respondent in issuing the impugned proceedings No.E/2185 of 2006, dated 18.11.2006 cancelling the authorization of the petitioner's Fair Price Shop without making any independent enquiry and without giving any opportunity, as illegal, arbitrary and against the principles of natural justice and consequently to set aside the same and to pass such other suitable orders.

3. The impugned proceedings, dated 18.11.2006, read as hereunder:-

"In the reference 1st cited, the M.R.O., Kulkacherla Manda has submitted a report on diversion of (200) Ltrs of Kerosene to black market by the FPS dealer of Chakalpalli Village, Kulkacherla Mandal, and proposed to initiate action against the dealer.

Accordingly, the authorization of the F.P.S. dealer has been suspended vide this office reference 3rd cited and issued Show

Cause Notice vide reference 3rd cited.

The F.P.S. dealer has submitted explanation in the reference 5th cited and the same has been examined and found that the explanation is not satisfactory and charges are proved, and the FPS dealer has violated the provisions under PDS Control Order 2001.

In view of the above, the authorization issued to Smt. K. Bheem Bai, FPS dealer of Chakalpalli Village is hereby cancelled.”

4. A counter-affidavit has been filed in W.V.M.P.No.1566 of 2007 by the proposed parties, who were impleaded as respondents 4 and 5. Reply affidavit has also been filed by the petitioner.

5. It is stated by the petitioner that she was appointed as a permanent Fair Price Shop dealer under S.T. Category on 08.02.1995. Since the date of her appointment, she has been distributing the essential commodities to the cardholders without any inconvenience or complaint from the cardholders and also to the utmost satisfaction of the authorities. It is further stated that at present her authorization was renewed by the second respondent up to 31.03.2008.

6. It is further stated that while so, the third respondent herein has reported to the second respondent *vide* his letter No.D/406/06, dated 11.08.2006, alleging that the petitioner diverted 200 liters of kerosene illegally and not distributed the essential commodities from the month of July up to 10th August. It was further alleged that on 11.08.2006 when enquiry was conducted in Chakalipalli Village, the petitioner intentionally not attended for enquiry and she has not adduced the stock register and licence at the time of enquiry.

7. It is further stated by the petitioner that on the basis of the alleged report of the third respondent, the second respondent without

conducting any enquiry and without giving any opportunity suspended her authorization on 19.08.2006 through his proceedings No.E/2185/2006 stating that the petitioner has diverted 200 Ltrs of Kerosene to Black Market through Jeep No.AP 21 T 7386 on 10.08.2006 and she violated the provisions under PDS Control Order 2001 to gain illegal profits.

8. It is also stated that the alleged allegations made by the respondents are not true and valid. In fact, the respondents have neither examined the owner of the vehicle nor seized the vehicle. It is further stated that the driver of the vehicle also not disclosed about the contravention of the dealer. In fact, the petitioner distributed the commodities for the month of July, 2006 by the end of the month and the same was verified on 02.08.2006 by the Mandal Revenue Inspector, Kulkalcherla, who endorsed the balance stock of 200 Ltrs of Kerosene on the same day.

9. It is further stated that the petitioner had fallen sick, hospitalized and underwent treatment from 06.08.2006 to 15.08.2006 and in those days, she was out of village. It is further stated that due to her ill-health only the remaining stock could not be distributed to the customers. The petitioner was under the bonafide impression to distribute the same after her recovery from ill health. It is further stated that after getting treatment on 16.08.2006, the petitioner came back to village, opened the shop and found that a drum was stolen containing 200 Ltrs of kerosene. Immediately, she informed the same to the Sarpanch of her village and with his assistance, she lodged a complaint before the Station House Officer, Kulkacherla. It is further stated that on enquiry, she came to know that on 10.08.2006, their villagers caught hold a jeep bearing No.AP21 T 7386 with 200 Ltrs of Kerosene belonging to her fair price shop and reported the same to the Mandal Revenue

Officer, Kulkacherla. It is further stated that the Mandal Revenue Officer, Kulkacherla without conducting any enquiry with Village Administrative Officer or the Sarpanch or villagers sent a report on 11.08.2006 to the second respondent in a common nature. It is further stated that on the basis of the said report, the second respondent without issuing show cause notice and without conducting any enquiry suspended her authorization on 19.08.2006.

10. Further it is stated that the petitioner had not committed any irregularities as stated in the suspension order and that the petitioner and the villagers also have no knowledge about the conducting of enquiry as stated in the report of the third respondent. It is further stated that due to political pressure and to do favour to their followers, the third respondent reported against the petitioner.

11. It is also further stated that against the said suspension order, the petitioner preferred an appeal before the first respondent in Appeal No.A7/309/2006 along with a stay application. It is further stated that without verifying the facts, the first respondent posted the matter. Having no other alternative, the petitioner preferred W.P.No.20061 of 2006 for not passing orders on her stay petition filed before the first respondent. In the said writ petition, after hearing, this Court was pleased to grant orders as follows:-

“There shall be interim suspension of the proceedings No.E/2185/2006, dated 19.08.2006 on the file of the Special deputy Collector & Revenue Divisional Officer, Chevella R.R.District by permitting the petitioner to continue as Fair Price Shop Dealer of Chakalpalli Village, Kulkacherla Mandal, R.R.District and to distribute the essential commodities to the card holders. However, this will not preclude the authorities from disposing of the appeal filed by the petitioner on 19.09.2006.”

12. It is further stated that as per the directions of this Court, the second respondent revoked the authorization of the petitioner and directed the Mandal Revenue Officer, Kulkacherla Mandal to allot the essential commodities to her to distribute the same to the card holders of Chakalpally Village. Till then, the petitioner has been lifting the essential commodities and distributing the same to the card holders. It is also stated that a show cause notice was issued to the petitioner on 28.09.2006 calling explanation within

7 days from the date of receipt of the show cause notice. The petitioner received the said show cause notice on 17.10.2006 and submitted her detailed explanation on 26.10.2006.

13. It is further stated that in the meanwhile the appeal was dismissed by the first respondent directing the second respondent to finalize the enquiry within two months. Surprisingly, the second respondent without conducting any enquiry, without verifying the facts and circumstances, and without examining the witnesses passed the impugned order, dated 18.11.2006, cancelling her authorization through proceedings No.E/2185/2006.

14. It is further stated that after receiving the explanation, the second respondent without making any independent enquiry nor fixing a date for hearing, has cancelled her authorization basing on the alleged false report submitted by the third respondent. It is stated that the charges framed by the second respondent are only technical in nature and do not show any diversion or black marketing of the essential commodities and do not warrant cancellation of her authorization without making any independent enquiry. Hence, the impugned proceedings failed to give any definite finding on each charge and the impugned orders suffers from material irregularities. It is further stated

that the petitioner and her relations did not support the ruling party in the panchayat elections, and the ruling party people, who wanted their supporters to be appointed as a F.P. Shop Dealer stage managed the show and made the second respondent in issuing the impugned proceedings without any reason. After cancellation of her authorization the second and third respondents under the guise of making an alternative arrangement are making efforts to appoint a dealer of the ruling party. It is further submitted that the petitioner has taken released orders from the third respondent on 05.12.2006 for distributing the commodities for the month of December, 2006.

15. This Court issued Rule Nisi on 08.12.2006 and granted interim suspension in W.P.M.P.No.32756 of 2006.

16. In the affidavit filed by respondents 4 and 5 in W.P.M.P.No.1566 of 2007, it is stated that the petitioner has been indulging in diverting the essential commodities and has been causing difficulties to the cardholders. It is further stated that the fourth respondent is also a Tribal and a cardholder and drawing the essential commodities from the petitioner's fair price shop. It is further stated that the petitioner was found to be diverting the essential commodities on 11.08.2006. The cardholders had caught hold of one jeep bearing No.AP21T-7386 when it was diverting one full barrel of kerosene. They have reported the matter to the Panchayat Secretary and also to the Mandal Revenue Officer, Kulakacherla Mandal. The officials of the Mandal Office have come to the village and seized the barrel containing 200 liters of kerosene by conducting a panchanama. The statements of the villagers were also recorded by the revenue officials. The said matter was reported by the third respondent to the second respondent and the licence of the petitioner was suspended by the second respondent *vide* proceedings dated 19.08.2006. Thereafter, the second

respondent had issued a show cause notice to the petitioner and after receiving the explanation from the petitioner he cancelled her fair price shop dealership *vide* proceedings No.E/2185/2006, dated 18.12.2006. It is further stated that the impugned orders does not suffer from any illegality. The contentions of the petitioner that she was hospitalized, that the kerosene drum was stolen and that she gave a complaint to the Station House Officer on 16.08.2006, are false and invented for the purpose of this writ petition. It is further stated that the petitioner's illegal diversion of kerosene was caught red handed that the panchanama was conducted by the Revenue authorities and that the witnesses were examined. Further it is stated that the authorities have issued a show cause notice and on receipt of the reply they have cancelled the dealership. It is stated that there is no need for any elaborate enquiry, especially, in a case where the diversion of the kerosene was caught red handed by the villagers and the panchanama was conducted by the revenue authorities. It is further stated that there is no illegality in the impugned order and therefore, the writ petition is liable to be dismissed with costs.

17. A reply affidavit has been filed by the writ petitioner wherein it was stated that this Court granted interim suspension on 08.12.2006 in W.P.M.P.No.32756 of 2006 in W.P.No.25551 of 2006 and as per the order of this Court, the petitioner is continuing as Fair Price Shop Dealer at Chakalapalli Village, Kulkacherla Mandal, R.R.District. It is further stated that the impleaded respondents are doing agricultural work and that they are not having any locus standi to file the implead petition as the case is in between the official respondents and the petitioner herein only. If there is any grievance to the impleaded respondents, they can approach to the revenue authorities i.e., Mandal Revenue Officer or Revenue Divisional Officer or District Collector, Ranga Reddy District. The impleaded respondents are only

cardholders and the dealer is supplying the essential commodities regularly to the card holders including impleaded respondents 4 and 5.

18. It is also stated that the petitioner did not commit any irregularities nor diverted 200 ltrs of kerosene. The third respondent submitted his report to the District Collector and Special collector (RDO) on 7.3.2007 as follows:-

“in the above circumstances and enquiry report of the Mandal Revenue Inspector, I am submitting the detailed report on the allegation of Smt. Bheembai FPS Dealer, Kulakacherla Mandal and she has not diverted the 200 Litres of PDS Kerosene meant for card holders to sell the same into the black market to gain the illegal profits. Hence, I am submitting this report to drop the 6-A case and take necessary action in accordance with rules.”

19. It is further stated that the Mandal Revenue Inspector conducted the panchanama before the witnesses and Sarpanch, VSS Chairman and Members and a statement was recorded by the Deputy Tahsildar, Enforcement Pargi, and it clearly shows that the petitioner did not commit any irregularities. Due to harassment of impleaded respondents No.4 and 5, the husband of the petitioner died on 19.03.2007 and the death certificate No.41/45/2007 dated 11.04.2007 is also enclosed. The impleaded respondents are pressurizing the official respondents with the political leaders and harassing the petitioner. It is stated that the petitioner belongs to Schedule Tribe Community and a poor lady, old age parents and children are depending upon her, and after death of her husband she is facing so many financial problems. It is further stated that the impleaded respondents bore grudge against the petitioner and were harassing to cancel her authorization.

20. It is further stated that the first respondent i.e., Joint Collector R.R. District issued 6-A notice vide 6-A case No.A7/456/2006 dt. 9.8.2007 and the case is reserved for orders on 24.08.2007. The other allegations made also had been denied and specific stand had been taken that the impleaded respondents have no locus standi at all to file the implead petition.

21. It cannot be said that the card holders or the beneficiaries under no circumstances have locus standi, but however, in the light of the nature of the order, which had been impugned, this Court is satisfied that the impugned order was not made in accordance with law. Accordingly, the same is hereby quashed and the matter is remitted to the second respondent to take into consideration all the facts and circumstances and pass appropriate orders within a period of eight (8) weeks from the date of receipt of a copy of this order, in accordance with law.

22. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

P.S.NARAYANA, J.

DATED:1st November, 2007

Note: Furnish CC within in three days

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